

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

October 4, 2007

A meeting of the Board of Environmental Protection was held on Thursday, October 4, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest Hilton, Acting Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler

Absent: Nancy Anderson, Sue Lessard and Virginia Plummer

<u>Staff:</u>	Bureau of Land and Water Quality	Hetty Richardson
	Bureau of Land and Water Quality	James Crowley
	Bureau of Land and Water Quality	Dana Murch

Others: David Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Jan McClintock, Assistant Attorney

(Meeting adjourned at approximately 2:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Environmental Council of States (ECOS): Commissioner Littell gave the Board a briefing on his presentation to the Waste Committee at the ECOS conference about Maine's concerns on the petition for exemption of electronics from the hazardous waste category. The Department is working with the Attorney General's Office on a letter to the US Department of Transportation asking that they not grant the electronic industry's petition. The Waste Committee spontaneously voted unanimously to support Maine's initiative and 12 other states are now planning to submit similar letters seeking petition denial.

Commissioner Littell explained that he also spent time working with other states in other regions than New England to gain support for stronger environmental protections on coal fired power plants.

Regional Greenhouse Gas Initiative (RGGI): An organization meeting was conducted last week that finalized the structure of the legal entity for management of trades among the 10 RGGI states. New York is the first chair; New Jersey the second vice chair; and Maine will serve as the third vice chair with chairs from Massachusetts and New Hampshire. The chairs consist of environmental and public utility commissioners. Lastly, a large effort is being made to ensure that all state rules are consistent across the region so that a central auction can be conducted.

BEP Jurisdiction / Hearing: The Department received requests for a public hearing on the following matters, but concluded that they do not meet the criteria for a public hearing:

Disposal of dredge materials by Cianbro. Given project timelines, Cianbro has modified the application seeking disposal of dredge materials at a landfill rather than in Penobscot Bay. Cianbro will seek other disposal options for future phases of this project. The modification has eliminated the need for consideration of a public hearing at this time.

The Department received a request for a more extensive review of a stormwater application concerning a 7-lot subdivision in China. Commissioner Littell noted that small sub-divisions typically only trigger stormwater regulations.

The Department received several requests for a public hearing on an application by Norman Hunt and Jan and Dan Barnett in Lubec for shoreline stabilization. The Department has requested modifications to the project and Inland Fisheries and Wildlife comments that potential impacts to shorebird habitat can be minimized by limiting the construction window. The application is still under review, but the Department does not believe a public hearing is warranted.

QUESTIONS:

Board member Hilton noted that the Army Corps generally oversees disposal of dredge materials and asked if there was co-jurisdiction and why Cianbro wouldn't haul dredge materials further out to sea to a location already allocated for disposal of this type of material.

Commissioner Littell responded that the federal regulations governing disposal of dredge materials, which apply beyond the three mile limit, require extensive biological testing which is time consuming and costly and not cost effective for small projects. The amount of materials proposed for disposal by Cianbro along with the timing needs of the project did not provide for disposal at the Army Corps site.

Board member Hilton asked about the status of the EPA California wavier program related to CO2 emissions from mobile sources.

Commissioner Littell advised that the outcome is still pending.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS:

Downeast LNG: Downeast has filed a letter stating it no longer has title, right or interest in a portion of its sendout pipeline - the portion through Moosehorn National Wildlife Refuge - and is withdrawing its applications. Professional Mariners and Town of Robbinston Residents sent a letter supporting Downeast's position re: withdrawal. Copies of the letters were distributed to Board members. Cindy noted that Ms. Plummer is away and Ms. Bensinger has not had an opportunity to review the submittal. The public hearing scheduled for October 25th has not been canceled - decision on the hearing awaits the Chair's consideration of the matter. Board members were asked to continue to hold October 25th for a meeting, either for Downeast or perhaps other Board business.

Quoddy Bay: A Pre-hearing conference has been scheduled for Tuesday, October 16th. Presiding Officer Hilton indicated an interest in a site visit.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

1. BEP MINUTES – April 5, 2007 (approval)

Board voted (7-0-0-3) to approve consent agenda item number 1 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

2. BEP MINUTES – May 17, 2007 (approval)

Board voted (6-0-1-3) to approve consent agenda item number 2 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Don Guimond abstained. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

3. BEP MINUTES – June 7, 2007 (approval)

Board voted (7-0-0-3) to approve consent agenda item number 3 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

4. BEP MINUTES – June 21, 2007 (approval)

Board voted (6-0-1-3) to approve consent agenda item number 4 with a minor correction to the end time of the meeting: Meeting ended at 12:35 **a p.m.**

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Don Guimond abstained. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

5. BEP MINUTES – July 5, 2007 (approval)

Board voted (7-0-0-3) to approve consent agenda item number 5 as presented.

[Note: Board members Nancy Anderson, Nancy Ziegler and Elizabeth Ehrenfeld departed prior to close of the meeting on 7/5/07 and did not vote on all items.]

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

6. BEP MINUTES – August 2, 2007 (approval)

Board voted (6-0-1-3) to approve consent agenda item number 6 with changes to the recorded vote as follows:

[Note: Board members Nancy Anderson and Elizabeth Ehrenfeld departed prior to close of the meeting on 8/2/07 and did not vote on all items.]

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale abstained. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

CHAPTER 156, CO2 BUDGET TRADING PROGRAM – vote (8-0-0-2)

*Board members **Elizabeth Ehrenfeld**, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, and M. Wing Goodale were absent.*

**CHAPTER 157, CO2 BUDGET TRADING PROGRAM WAIVER AND
SUSPENSION-NEW – Major substantive (post to public hearing) – vote (8-0-0-2)**

*Board members **Elizabeth Ehrenfeld**, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, and M. Wing Goodale were absent.*

**QUODDY BAY LNG, LLC, QUODDY BAY PIPELINE LLC, -- PERRY Site Location
of Development L-23600-26-A-N, Natural Resources Protection Act L-23600-TG-
B-N, Air Emissions A-975-71-A-N, Waste Discharge and Storm Water W-9010-
50-A-N, Section 401 Water Quality Certification and Coastal Zone Management
(Board Jurisdiction) – vote (8-0-0-2)**

*Board members **Elizabeth Ehrenfeld**, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, and M. Wing Goodale were absent.*

7. BEP MINUTES – August 16, 2007 (approval)

Board voted (6-0-1-3) to approve consent agenda item number 7 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, and Nancy Ziegler voted to support the motion. Board member Matt Scott abstained. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

III. Regular Agenda

**1. CHAPTER 305, NATURAL RESOURCES PROTECTION ACT - PERMIT BY RULE
SECTION 20, Activities in existing developed areas located in, on or over high or
moderate value inland waterfowl and wading bird habitat, or shorebird nesting,
feeding, and staging areas. (Post to public hearing)**

Staff: Hetty Richardson, Bureau of Land and Water Quality

Board voted (7-0-0-3) to post amendments to Chapter 305, Natural Resource Protection Act, Section 20 – activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting feeding, and staging areas to hearing on Thursday, November 1, 2007. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

2. CHAPTER 528 PRETREATMENT PROGRAM / AMENDMENTS (post to public hearing)

Staff: James R. Crowley, Bureau of Land and Water Quality

Board voted (7-0-0-3) to post amendments to Chapter 528, Pretreatment Program to 30-day written public comment and to establish November 23, 2007 as the deadline for receipt of comments. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

3. MESSALONSKEE STREAM HYDRO LLC / UNION GAS HYDRO PROJECT – L-17585-33-D-N (Petition by Douglas Watts for Revocation, Modification or Suspension)

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (6-1-0-3) on a motion to dismiss the petition submitted by Douglas Watts to modify, suspend or revoke the 1995 water quality certification issued for the Union Gas Hydro Project, owned by Messalonskee Stream Hydro LLC. The petition requested that the certification be modified to lower the licensed height of the dam to natural bedrock in order to provide for eel and fish passage. The Board instructed staff to draft a decision document reflecting the Board's findings and reasoning. Additionally, the Board members expressed a desire to submit a letter to the Legislature concerning the issue of eel and fish passage as it relates to LD 1528 and directed its Executive Analyst to draft a letter for future Board consideration. The Board voted pursuant to 38 M.R.S.A. Section 341-D(3), 06-096 CMR Chapter 2.27, The Processing of Licenses and Other Administrative Matters.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, and Nancy Ziegler voted to support the motion. Board member Matt Scott voted opposed. Board members Nancy Anderson, Sue Lessard and Virginia Plummer were absent.

Next Regular Meeting –Thursday, November 1, 2007 – **Holiday Inn / Ground Round**